

PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT

- 1. Revise the authority citation for part 1625 to read as follows:

Authority: 29 U.S.C. 621–634; 5 U.S.C. 301; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807; E.O. 12067, 43 FR 28967.

Subpart A—Interpretations

- 2. Revise § 1625.2 to read as follows:

§ 1625.2 Discrimination prohibited by the Act.

It is unlawful for an employer to discriminate against an individual in any aspect of employment because that individual is 40 years old or older, unless one of the statutory exceptions applies. Favoring an older individual over a younger individual because of age is not unlawful discrimination under the ADEA, even if the younger individual is at least 40 years old. However, the ADEA does not require employers to prefer older individuals and does not affect applicable state, municipal, or local laws that prohibit such preferences.

- 3. Revise § 1625.4 to read as follows:

§ 1625.4 Help wanted notices or advertisements.

(a) Help wanted notices or advertisements may not contain terms and phrases that limit or deter the employment of older individuals. Notices or advertisements that contain terms such as *age 25 to 35*, *young*, *college student*, *recent college graduate*, *boy*, *girl*, or others of a similar nature violate the Act unless one of the statutory exceptions applies. Employers may post help wanted notices or advertisements expressing a preference for older individuals with terms such as *over age 60*, *retirees*, or *supplement your pension*.

(b) Help wanted notices or advertisements that ask applicants to disclose or state their age do not, in themselves, violate the Act. But because asking applicants to state their age may tend to deter older individuals from applying, or otherwise indicate discrimination against older individuals, employment notices or advertisements that include such requests will be closely scrutinized to assure that the requests were made for a lawful purpose.

- 4. Revise the first paragraph of § 1625.5 to read as follows:

§ 1625.5 Employment applications.

A request on the part of an employer for information such as *Date of Birth* or *age* on an employment application form is not, in itself, a violation of the Act.

But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate discrimination against older individuals, employment application forms that request such information will be closely scrutinized to assure that the request is for a permissible purpose and not for purposes proscribed by the Act. That the purpose is not one proscribed by the statute should be made known to the applicant by a reference on the application form to the statutory prohibition in language to the following effect:

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DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 197**

[DoD–2006–OS–0023]

RIN 0790–AI12

Historical Research in the Files of the Office of the Secretary of Defense (OSD)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule identifies and updates the policies and procedures for the programs that permit U.S. citizens to perform historical research in records created by or in the custody of the Office of the Secretary of Defense (OSD). Historical Research in the Files of OSD updates the policies and procedures for the programs that permit U.S. citizens to perform historical research in records created by or in the custody of the OSD.

DATES: *Effective Date:* This rule is effective August 6, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Storer, 703–696–2197.

SUPPLEMENTARY INFORMATION: Anyone accessing classified material must possess the requisite security clearance. Information requested by historical researchers shall be accessed at a DoD activity or facility under the control of the National Archives and Records Administration (NARA).

Access to records by historical researchers shall be limited to the specific records within the scope of the proposed historical research over which the Department of Defense has classification authority. Access shall also be limited to any other records for which the written consent of other Agencies that have classification

authority over information contained in or revealed by the records has been obtained.

Access to unclassified OSD Component files by historical researchers shall be permitted consistent with the restrictions of the exemptions of the Freedom of Information Act. The procedures for access to classified information shall be used if the requested unclassified information is contained in OSD files whose overall markings are classified.

On February 28, 2007 (72 FR 8952), the Department of Defense published a proposed rule, “Historical Research in the Files of the Office of the Secretary of Defense (OSD)” inviting public comments. No comments were received.

Executive Order 13132, “Federalism”

It has been certified that 32 CFR part 197 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

Executive Order 12630, “Government Actions and Interference With Constitutionally Protected Property Rights”

It has been certified that 32 CFR part 197 does not:

- (1) Place a restriction on a use of private property;
- (2) Involve a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property; or
- (3) Regulate private property use for the protection of public health or safety.

Executive Order 12866, “Regulatory Planning and Review”

It has been certified that 32 CFR part 197 does not:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribunal governments or communities;

- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

- (4) Raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in this Executive Order.

Executive Order 13045, "Protection of Children From Environmental Health Risks and Safety Risks"

It has been certified that 32 CFR part 197 does not present any environmental health or safety effects on children.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

It has been certified that 32 CFR part 197 does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

National Environmental Policy Act

It has been certified that 32 CFR part 197 does not significantly affect the quality of the human environment.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that 32 CFR part 197 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Historical Research in the files of the Office of the Secretary of Defense (OSD) updates policies and procedures for the programs that permit U.S. citizens to perform historical research in records created by or in the custody of the OSD.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 197 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 197

Administrative practice and procedure.

■ Accordingly, 32 CFR Chapter 1, subchapter M is amended by adding part 197 to read as follows:

PART 197—HISTORICAL RESEARCH IN THE FILES OF THE OFFICE OF THE SECRETARY OF DEFENSE (OSD)

Sec.

- 197.1 Purpose.
- 197.2 Applicability and scope.
- 197.3 Definition.
- 197.4 Policy.
- 197.5 Responsibilities.
- 197.6 Procedures.

Appendix A to Part 197—Explanation of Freedom of Information Act (5 U.S.C. 552) Exemptions

Appendix B to Part 197—Procedures for Historical Researchers Permanently Assigned Within the Executive Branch Working on Official Projects

Appendix C to Part 197—Procedures for the Department of State (DOS) Foreign Relations of the United States (FRUS) Series

Appendix D to Part 197—Procedures for Historical Researchers Not Permanently Assigned to the Executive Branch

Appendix E to Part 197—Form Letter—Conditions Governing Access to Official Records for Historical Research Purposes

Appendix F to Part 197—Procedures for Copying of Documents for the Foreign Relations of the United States Series

Appendix G to Part 197—Procedures for Copying Documents

Authority: 10 U.S.C. 301.

§ 197.1 Purpose.

This part identifies and updates the policies and procedures for the programs that permit U.S. citizens to perform historical research in records created by or in the custody of the OSD consistent with Executive Order 12958, DoD 5200.01-R¹, DoD 5400.07-R, DoD Directive 5400.11, the Interagency Agreement on Access for Official Agency Historians, and DoD Directive 5230.09.

§ 197.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense and organizations for which the Washington Headquarters Services provides administrative support (hereafter referred to collectively as the "OSD Components").

(b) All historical researchers.

(c) Former OSD Presidential Appointees seeking access to records containing information they originated, reviewed, signed, or received while serving in an official capacity.

§ 197.3 Definition.

Historical researcher or researcher. A person desiring to conduct research in OSD files for historical information to use in any project (e.g. agency historical office projects, books, articles, studies, or reports) regardless of the person's employment status.

§ 197.4 Policy.

It is DoD policy, pursuant to E.O. 12958, that:

(a) Anyone accessing classified material must possess the requisite security clearance.

(b) Information requested by historical researchers shall be accessed at a DoD activity or facility under the control of the National Archives and Records Administration (NARA). Usually such access will occur at either the

Washington National Records Center (WNRC) in Suitland, Maryland, or NARA's Archives II in College Park, Maryland.

(c) Access to records by historical researchers shall be limited to the specific records within the scope of the proposed historical research over which the Department of Defense has classification authority. Access shall also be limited to any other records for which the written consent of other Agencies that have classification authority over information contained in or revealed by the records has been obtained.

(d) Access to unclassified OSD Component files by historical researchers shall be permitted consistent with the restrictions of the exemptions of the Freedom of Information Act that are contained in E.O. 12958 and explained in the appendix B to this part (5 U.S.C. 552). The procedures for access to classified information shall be used if the requested unclassified information is contained in OSD files whose overall markings are classified.

(e) Under E.O. 12958, or its successor, persons permanently assigned within the Executive Branch may be authorized access to classified information for official projects under DoD classification authority, provided such access is essential to the accomplishment of a lawful and authorized Government purpose and a written determination of the trustworthiness of the persons has been made.

(f) Under E.O. 12958 and paragraph C6.2.2. of DoD 5200.01-R, persons not permanently assigned within the Executive Branch who are engaged in historical research projects or persons permanently assigned within the Executive Branch engaged in personal, i.e. unofficial projects, may be authorized access to classified information under DoD classification authority. The authorization shall be based on a written determination of the researcher's trustworthiness, on the proposed access being in the interests of national security, and on the researcher signing a copy of the letter (appendix E to this part) by which he or she agrees to safeguard the information and to authorize a review of any notes and manuscript for a determination that they contain no classified information.

(g) Access for former Presidential appointees is limited to records they originated, reviewed, signed, or received while serving as Presidential appointees.

(h) Contractors working for Executive Branch Agencies may be allowed access

¹Copies of unclassified DoD Directives, DoD Instructions, DoD Publications, and OSD Administrative Instructions may be found at <http://www.dtic.mil/whs/directives/>.

to classified OSD Component files. No copies of still classified documents will be released directly to a contractor. All copies of classified documents needed for a classified project will be forwarded to the office of the Contracting Government Agency responsible for monitoring the project. The monitoring office will be responsible for ensuring that the contractor safeguards the documents. The information is only used for the project for which it was requested, and that the contractor returns the documents upon completion of the final project. All copies of documents needed for an unclassified project will undergo a mandatory declassification review before the copies are released to the contractor to use in the project.

(i) The records maintained in OSD Component office files and at the WNRC cannot be segregated, requiring that authorization be received from all agencies whose classified information is or is expected to be in the requested files for access to be permitted.

(j) All researchers must hold security clearances at the classification level of the requested information. In addition, all DoD employed requesters, to include DoD contractors, must have Critical

Nuclear Weapons Design Information (CNWDI) access and all other Executive Branch and non-Executive Branch requesters must have a Department of Energy issued "Q" clearance to access CNWDI information.

§ 197.5 Responsibilities.

(a) The Director of Administration and Management, Office of the Secretary of Defense, (DA&M, OSD), or designee shall, according to the Deputy Secretary of Defense Memorandum dated August 25, 1993, be the approval authority for access to DoD classified information in OSD Component files and in files at the National Archives, Presidential libraries, and other similar institutions.

(b) The Heads of the OSD Components, when requested, shall:

(1) Determine whether access is for a lawful and authorized Government purpose or in the interest of national security.

(2) Determine whether the specific records requested are within the scope of the proposed historical research.

(3) Determine the location of the requested records.

(4) Provide a point of contact to the OSD Records Administrator.

(c) The OSD Records Administrator shall:

(1) Exercise overall management of the Historical Research Program.

(2) Maintain records necessary to process and monitor each case.

(3) Obtain all required authorizations.

(4) Obtain, when warranted, the legal opinion of the General Counsel of the Department of Defense regarding the requested access.

(5) Perform a mandatory declassification review on documents selected by the researchers for use in unclassified projects.

(6) Provide to prospective researchers the procedures necessary for requesting access to OSD Component files.

(d) The Researcher shall provide any information and complete all forms necessary to process a request for access.

§ 197.6 Procedures.

The procedures for processing and/or researching for access to OSD Component files are in appendices B, C, and D to this part.

Appendix A to Part 197—Explanation of Freedom of Information Act (5 U.S.C. 552) Exemptions

A. Exemptions

Exemption	Explanation
(b)(1)	Applies to information that is currently and properly classified pursuant to an Executive Order in the interest of national defense or foreign policy (See E.O. 12958 and DoD 5200.01-R) (Sec 1.4. Classification Categories from E.O. 12958 are provided on the next page);
(b)(2)	Applies to information that pertains solely to the internal rules and practices of the Agency; this exemption has two profiles, "high" and "low." The "high" profile permits withholding a document which, if released, would allow circumvention of an Agency rule, policy, or statute, thereby impeding the Agency in the conduct of its mission. The "low" profile permits withholding if there is no public interest in the document, and it would be an administrative burden to process the request;
(b)(3)	Applies to information specifically exempted by a statute establishing particular criteria for withholding. The language of the statute must clearly state that the information will not be disclosed;
(b)(4)	Applies to information such as trade secrets and commercial or financial information obtained from a company on a privileged or confidential basis which, if released, would result in competitive harm to the company;
(b)(5)	Applies to inter- and intra-Agency memoranda that are deliberative in nature; this exemption is appropriate for internal documents that are part of the decision-making process, and contain subjective evaluations, opinions, and recommendations;
(b)(6)	Applies to information the release of which could reasonably be expected to constitute a clearly unwarranted invasion of the personal privacy of individuals; and
(b)(7)	Applies to records or information compiled for law enforcement purposes that could reasonably be expected to interfere with law enforcement proceedings; would deprive a person of a right to a fair trial or impartial adjudication; could reasonably be expected to constitute an unwarranted invasion of the personal privacy of others; disclose the identity of a confidential source; disclose investigative techniques and procedures; or could reasonably be expected to endanger the life or physical safety of any individual.

See Chapter III of DoD 5400.07-R for further information.

B. Extract From E.O. 12958

Section 1.4. Classification Categories. Information shall not be considered for classification unless it concerns:

(a) Military plans, weapons systems, or operations;

(b) Foreign government information;

(c) Intelligence activities (including special activities), intelligence sources or methods, or cryptology;

(d) Foreign relations or foreign activities of the United States, including confidential sources;

(e) Scientific, technological, or economic matters relating to the national security, which includes defense against transnational terrorism;

(f) United States Government programs for safeguarding nuclear materials or facilities;

(g) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating

to the national security, which includes defense against transnational terrorism; or

(h) Weapons of mass destruction.

Appendix B to Part 197—Procedures for Historical Researchers Permanently Assigned Within the Executive Branch Working on Official Projects

1. The Head of each OSD Component, when requested, shall:

a. Make a written determination that the requested access is essential to the

accomplishment of a lawful and authorized Government purpose, stating whether the requested records can be made available; if disapproved, cite specific reasons.

b. Provide the location of the requested records, including accession and box numbers if the material has been retired to the WNRC.

c. Provide a point of contact for liaison with the OSD Records Administrator if any requested records are located in OSD Component working files.

2. The OSD Records Administrator shall:

- a. Process all requests from Executive Branch employees requesting access to OSD Component files for official projects.

- b. Determine which OSD Component(s) originated the requested records and, if necessary, request an access determination (paragraph 1.a. of this appendix) from the OSD Component(s) and the location of the requested records, including accession and box numbers if the records are in retired files.

- c. Request authorization for access from other Agencies as necessary:

- (1) By the terms of the "Interagency Agreement on Access for Official Agency Historians," hereafter referred to as "the Agreement", historians employed by a signatory Agency may have access to the classified information of any other Agency signatory to the Agreement found in OSD files. The Central Intelligence Agency (CIA) and National Security Council (NSC) are not signatories to the Agreement. Authorization for access must be obtained from these Agencies, as well as from any other non-signatory Agency whose classified information is expected to be found in the files to be accessed.

- (2) If the official historian is employed by an Agency that is not a signatory to the Agreement, authorization for access must be obtained from the CIA, NSC, Department of State (DoS), and any other non-DoD Agency whose classified information is expected to be found in the files to be accessed.

- (3) If the requester is not an official historian, authorization for access must be obtained from the CIA, NSC, DoS, and any other non-DoD Agency whose classified information is expected to be found in the files to be accessed.

- (4) Make a written determination as to the researcher's trustworthiness based on the researcher having been issued a security clearance.

- (5) Compile all information on the request for access to classified information to include evidence of an appropriately issued personnel security clearance and forward the information to the DA&M, OSD, or designee, who shall make the final access determination.

- (6) Notify the researcher of the authorization and conditions for access to the requested records or of the denial of access and the reason(s).

- (7) Ensure all conditions for access and release of information for use in the project are met.

- (8) Make all necessary arrangements for the researcher to visit the WNRC and review the requested records if they have been retired there.

- (9) Assign a member of his staff to supervise the researcher's copying of

pertinent documents at the WNRC. Provide a copier and toner cartridge or appropriate consumable supplies to be used by the researcher to copy the documents.

- (10) If the records are maintained in an OSD Component's working files, arrange for the researcher to review the material and make copies of pertinent documents in the OSD Component's office.

- (11) Notify the National Archives or Presidential library concerned of the authorization and conditions for access, if the researcher desiring to research material in those facilities is not an official historian or is an official historian employed by an Agency that is not a signatory to the Agreement.

3. The researcher shall:

- a. Submit a request for access to OSD files to the OSD Records Administrator, 1155 Defense, Pentagon, Washington, DC 20301-1155.

The request must contain the following information:

- (1) The name(s) of the researcher(s) and any assistant(s), level of security clearance, and the office to which the researcher is assigned.

- (2) Provide a statement on the purpose of the project, including whether the final product is to be classified or unclassified.

- (3) Provide an explicit description of the information being requested and if known, the originating office, so that the identification and location of the information may be facilitated.

- (4) An appropriate higher authority must sign the request.

- b. Ensure his or her security manager or personnel security office verifies his or her security clearances in writing to the Security Manager for the office of the OSD Records Administrator.

- c. Submit notes taken during research, as follows:

- (1) Use letter-sized paper (approximately 8½ by 11 inches), writing on only one side of the page. Each page of notes must pertain to only one document.

- (2) Indicate at the top of each page of notes the document's originator, date, subject (if the subject is classified, indicate the classification), folder number or other identification, accession number and box number in which the document was found, and the security classification of the document. All notes are considered classified at the level of the document from which they were taken.

- (3) Number each page of notes consecutively.

- (4) Leave the last 1½ inches on the bottom of each page of notes blank for use by the reviewing agencies.

- (5) Ensure the notes are legible, in English, and in black ink.

- (6) All notes must be given to the facility staff at the end of each day. The facility staff will forward the notes to the OSD Records Administrator for a declassification review and release determination.

- d. Maintain the file integrity of the records being reviewed, ensuring no records are removed and all folders are replaced in the correct box in their proper order.

- e. Make copies of any documents pertinent to the project, ensuring that staples are

carefully removed and that the documents are restapled before they are replaced in the folder. Subparagraph E3.1.3. of this appendix, also applies to the copying of documents. The copying of documents at the WNRC must be accomplished under the supervision of a member of the OSD Records Administrator staff (appendix D to this part).

- f. Submit, prior to unclassified presentation or publication, the completed manuscript, along with any copies of documents used and notes taken, to the OSD Records Administrator for onward transmission to the Chief, Security Review, Executive Services Directorate for review.

- g. If the requester is an official historian of an Agency signatory to the Agreement, requests for access to the records at the National Archives or a Presidential library should be addressed directly to the pertinent facility with an information copy to the OSD Records Administrator.

- (1) The historian's security clearances must be verified to the National Archives or the Presidential library.

- (2) Paragraphs 1.c. through 1.f. of this appendix apply to research in files at the National Archives, a Presidential library, or other facility.

- (3) All notes and documents must be given to the facility staff for forwarding to the office of the OSD Records Administrator.

Appendix C to Part 197—Procedures for the Department of State (DoS) Foreign Relations of the United States (FRUS) Series

1. The OSD Records Administrator shall:

- a. Determine the location of the records being requested by the DoS for the FRUS series under Public Law No. 102-138.

- b. Request authorization from the CIA, NSC, and any other non-DoD Agency not signatory to the Agreement for the State historians to have access to such non-DoD Agency classified information expected to be interfiled with the requested OSD records.

- c. Obtain written verification from the DoS Diplomatic Security staff of all security clearances, including "Q" clearances.

- d. Make all necessary arrangements for the State historians to access and review OSD files.

- e. Make all necessary arrangements for the State historians to copy documents selected for use in their research.

- (1) According to appendix F to this part, provide a staff member to supervise the copying and the copier to be used to copy the documents.

- (2) Compile a list of the documents that were copied by the DoS.

- f. Release all documents copied by the DoS for use in the FRUS still classified.

- g. Submit to the respective Agency a list of CIA and NSC documents copied and released to the State historians.

- h. Process requests from the DoS Historian's office for members of the Advisory Committee on Historical Diplomatic Documentation, who possess the appropriate security clearances, to have access to documents copied and used by the State historians to compile the FRUS series volumes or to the files that were reviewed to obtain the copied document. Make all

necessary arrangements for the Committee to review any documents that are at the WNRC.

2. The DoS Historian shall:

a. Submit requests for access to OSD files to the OSD Records Administrator, 1155 Defense, Pentagon, Washington, DC 20301-1155. The request should list the names and security clearances for the historians doing the research and an explicit description, including the accession and box numbers, of the files being requested.

b. Submit requests for access for members of the Advisory Committee on Historical Diplomatic Documentation to documents copied by the State historians for the series or the files reviewed to obtain the documents to the OSD Records Administrator.

c. Request that the DoS Diplomatic Security staff verify all security clearances in writing to the Security Manager for the office of the OSD Records Administrator.

d. According to appendix F to this part, supply the toner cartridge, paper, and other supplies required to copy the documents.

e. Give all copies of the documents to the member of the office OSD Records Administrator's staff who is supervising the copying as the documents are copied.

f. Submit any DoD documents desired for use or pages of the manuscript containing DoD classified information to the Chief, Security Review, Executive Services Directorate, 1155, Defense, Pentagon, Washington, DC 20301-1155 for a declassification review prior to publication.

Appendix D to Part 197—Procedures for Historical Researchers Not Permanently Assigned to the Executive Branch

1. The Head of each OSD Component, when required, shall:

a. Make recommendations to the DA&M, OSD, or his designee, as to approval or disapproval of requests to OSD files stating whether release of the requested information is in the interest of national security and whether the information can be made available; if disapproval is recommended, specific reasons should be cited.

b. Provide the location of the requested information, including the accession and box numbers for any records that have been retired to the WNRC.

c. Provide a point of contact for liaison with the OSD Records Administrator if any requested records are located in Component working files.

2. The OSD Records Administrator shall:

a. Process all requests from non-Executive Branch researchers for access to OSD files. Certify that the requester has the appropriate clearances.

b. Obtain prior authorization to review their classified information from the DoS, CIA, NSC, and any other Agency whose classified information is expected to be interfused with OSD records.

c. Make a determination as to which OSD Component originated the requested records, and as necessary, obtain written recommendations (paragraph 1.a. of this section) for the research to review the classified information.

d. Obtain a copy of the letter in Enclosure 6 of this AI signed by the researcher(s) and any assistant(s).

e. If the requester is a former Presidential appointee (FPA), after completion of the actions described in paragraph 1.b. through 1.b.(4) of this appendix, submit a memorandum to DoD, Human Resources, Security Division, requesting the issuance (including an interim) or reinstatement of an inactive security clearance for the FPA and any assistant and a copy of any signed form letters (paragraph 1.b. of this appendix). DoD, Human Resources, Security Division, will contact the researcher(s) and any assistant(s) to obtain the forms required to reinstate or obtain a security clearance and initiate the personnel security investigation. Upon completion of the adjudication process, notify the OSD Records Administrator in writing of the reinstatement, issuance, or denial of a security clearance.

f. Make a written determination as to the researcher's trustworthiness, based on his or her having been issued a security clearance.

g. Compile all information on the request for access to classified information to include either evidence of an appropriately issued or reinstated personnel security clearance and forward the information to the DA&M, OSD, or his designee, who shall make the final determination on the applicant's eligibility for access to classified OSD files. If the determination is favorable, the DA&M, OSD, or his designee, shall then execute an authorization for access, which will be valid for not more than 2 years.

h. Notify the researcher of the approval or disapproval of the request. If the request has been approved, the notification shall identify the files authorized for review and shall specify that the authorization:

(1) Is approved for a predetermined time period.

(2) Is limited to the designated files.

(3) Does not include access to records and/or information of other Federal Agencies, unless such access has been specifically authorized by those Agencies.

i. Make all necessary arrangements for the researcher to visit the WNRC and review any requested records that have been retired there, to include written authorization, conditions for the access, and a copy of the security clearance verification.

j. If the requested records are at the WNRC, make all necessary arrangements for the copying of documents; provide a copier and toner cartridge for use in copying documents and a staff member to supervise the copying of pertinent documents by the researcher.

k. If the requested records are maintained in OSD Component working files, make arrangements for the researcher to review the requested information and if authorized, copy pertinent documents in the OSD Component's office. Provide the OSD Component with a copy of the written authorization and conditions under which the access is permitted.

l. Compile a list of all the documents copied by the researcher.

m. Perform a mandatory declassification review on all notes taken and documents copied by the researcher.

n. If the classified information to be reviewed is on file at the National Archives,

a Presidential library or other facility, notify the pertinent facility in writing of the authorization and conditions for access.

3. The researcher shall:

a. Submit a request for access to OSD Component files to the OSD Records Administrator, 1155 Defense, Pentagon, Washington, DC 20301-1155. The request must contain the following:

(1) As explicit a description as possible of the information being requested so that identification and location of the information may be facilitated.

(2) A statement as to how the information will be used, including whether the final project is to be classified or unclassified.

(3) State whether the researcher has a security clearance, including the level of clearance and the name of the issuing Agency.

(4) The names of any persons who will be assisting the researcher with the project. If the assistants have security clearances, provide the level of clearance and the name of the issuing Agency.

b. A signed copy of the letter (appendix E to this part) by which the requester agrees to safeguard the information and to authorize a review of any notes and manuscript for a determination that they contain no classified information. Each project assistant must also sign a copy of the letter.

c. If the requester is an FPA, complete the forms necessary (see paragraph 1.b. of this appendix) to obtain a security clearance. Each project assistant will also need to complete the forms necessary to obtain a security clearance. If the FPA or assistant have current security clearances, their personnel security office must provide verification in writing to the Security Manager for the office of the OSD Records Administrator.

d. Maintain the integrity of the files being reviewed, ensuring that no records are removed and that all folders are replaced in the correct box in their proper order.

e. If copies are authorized, all copies must be given to the custodian of the files at the end of each day. The custodian will forward the copies of the documents to the OSD Records Administrator for a declassification review and release to the requester.

(1) For records at the WNRC, if authorized, make copies of documents only in the presence of a member of the OSD Records Administrator's staff (appendix G to this part).

(2) As they are copied, all documents must be given to the OSD Records Administrator's staff member supervising the copying.

(3) Ensure all staples are carefully removed and that the documents are restapled before the documents are replaced in the folder. Paragraph 1.c. of this appendix also applies to the copying of documents.

f. Submit all notes (classified and unclassified) made from the records to the OSD Records Administrator for a declassification and release review through the custodian of the files at the end of each day's review as described in paragraphs 1.c.(3) through 1.c.(5) of appendix B to this part.

g. Submit the notes and final manuscript to the OSD Records Administrator for

forwarding to the Chief, Security Review, Executive Services Directorate, for a security review and clearance under DoD Directive 5230.09 prior to unclassified publication, presentation, or any other public use.

Appendix E to Part 197—Form Letter—Conditions Governing Access to Official Records for Historical Research Purposes

Date:
OSD Records Administrator
1155 Defense Pentagon
Washington, DC 20301-1155

Dear

I understand that the classified information to which I have requested access for historical research purposes is concerned with the national defense or foreign relations of the United States, and the unauthorized disclosure of it could reasonably be expected to cause damage, serious damage, or exceptionally grave damage to the national security depending on whether the information is classified Confidential, Secret, or Top Secret, respectively. If granted access, I therefore agree to the following conditions governing access to the Office of the Secretary of Defense (OSD) files:

1. I will abide by any rules and restrictions promulgated in your letter of authorization, including those of other Agencies whose information is interfiled with that of the OSD.

2. I agree to safeguard the classified information, to which I gain possession or knowledge because of my access, in a manner consistent with Part 4 of Executive Order 12958, "National Security Information," and the applicable provisions of the Department of Defense regulations concerning safeguarding classified information, including DoD 5200.1-R, "Information Security Program."

3. I agree not to reveal to any person or Agency any classified information obtained as a result of this access except as authorized in the terms of your authorization letter or a follow-on letter, and I further agree that I shall not use the information for purposes other than those set forth in my request for access.

4. I agree to submit my research notes for security review, to determine if classified information is contained in them, before their removal from the specific area assigned to me for research. I further agree to submit my manuscript for a similar review before its publication or presentation. In each of these reviews, I agree to comply with any decision of the reviewing official in the interests of the security of the United States, including the retention or deletion of any classified parts of such notes and manuscript whenever the Federal Agency concerned deems such retention or deletion necessary.

5. I understand that failure to abide by the conditions in this statement shall constitute sufficient cause for canceling my access to classified information and for denying me

any future access, and may subject me to criminal provisions of Federal Law as referred to in item 6.

6. I have been informed that provisions of title 18 of the United States Code impose criminal penalties, under certain circumstances, for the unauthorized disclosure, loss, copying, or destruction of defense information.

THIS STATEMENT IS MADE TO THE UNITED STATES GOVERNMENT TO ENABLE IT TO EXERCISE ITS RESPONSIBILITY FOR THE PROTECTION OF INFORMATION AFFECTING THE NATIONAL SECURITY. I UNDERSTAND THAT ANY MATERIAL FALSE STATEMENT THAT I MAKE KNOWINGLY AND WILFULLY SHALL SUBJECT ME TO THE PENALTIES OF TITLE 18, U.S. CODE, SECTION 1001.

Signature:

Witness's Signature:

Date:

Appendix F to Part 197—Procedures for Copying of Documents for the Foreign Relations of the United States Series

1. The records will be reviewed and copied at the WNRC, Suitland, Maryland.

2. The requested records have been reviewed under the declassification provisions of E.O. 12958. Part of NARA's government-wide procedures for the review process requires that certain types of documents be tabbed for easy identification. Any tabs removed during the research and copying must be replaced.

3. When documents are being copied, a DoD/WHIS/declassification and historical research branch staff member must be present at all times.

4. OSD will supply the copier, but the DoS must supply the toner cartridge, paper, staples, staple remover, stapler, and Post-It Notes. The copier is a Cannon Personal Copier-Model PC 425. It takes one of two cartridges—Cannon E20, which makes 2,000 copies and Cannon E40, which makes 4,000 copies.

5. The number of boxes to be reviewed will determine which of the following two procedures will apply. The Declassification and Historical Research Branch staff will make that determination at the time the request is processed. When the historian completes the review of the boxes, he or she must contact the Declassification and Historical Research Branch to establish a final schedule for copying the needed documents. To avoid a possible delay, a tentative schedule will be established at the time that the review schedule is set.

a. For a small number of boxes—the review and copying will take place simultaneously.

b. For a large number of boxes—the historian will review the boxes and mark the documents that are to be copied using Post-It Notes or WNRC Reproduction Tabs.

6. The documents must be given to the Declassification and Historical Research

Branch staff member for transmittal to the Declassification and Historical Research Branch Office for processing.

7. The Declassification and Historical Research Branch will notify the historian when the documents are ready to be picked-up.

Appendix G to Part 197—Procedures for Copying Documents

1. The records will be reviewed and copied at the WNRC, Suitland, Maryland.

2. The requested records have been reviewed under the declassification provisions of E.O. 12958. Part of NARA's government-wide procedures for the review process requires that certain types of documents be tabbed for easy identification. Any tabs removed during the research and copying must be replaced.

3. The researcher will mark the documents that he or she wants to copy using Post-It Notes or WNRC Reproduction Tabs.

4. Any notes taken during the review process must be given to the WNRC staff for transmittal to the Declassification Branch.

5. When documents are being copied, a DoD/WHIS/declassification and historical research branch staff member must be present at all times. In agreeing to permit the copying of documents from OSD classified files at the WNRC, the WNRC is requiring that the Declassification and Historical Research Branch be held solely responsible for the copying process. The staff member is only there to monitor the copying and ensure that all record management and security procedures are followed.

6. The Declassification and Historical Research Branch will supply the copier and toner cartridge.

7. The researcher will need to bring paper, staples, staple remover, stapler, and Post-It Notes.

8. When the researcher completes the review of the boxes, he or she must contact the Declassification and Historical Research Branch to establish a final schedule for copying the needed documents.

9. The documents must be given to the Declassification and Historical Research Branch staff member for transmittal to the Declassification and Historical Research Branch Office for processing.

10. When the documents are ready to be picked up or mailed, the Declassification and Historical Research Branch will notify the office.

11. All questions pertaining to the review, copying, or transmittal of OSD documents must be addressed to the OSD action officer.

12. The WNRC staff can only answer questions regarding the use of their facility.

Dated: June 28, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

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